

In the alternative, the United States respectfully moves pursuant to Rule 612(b) to admit those portions of the DEA report of an August 2014 proffer that Defendant utilized to refresh the recollection of Segundo Gutierrez. On December 14, 2018, counsel for Defendant Carlos Jimenez repeatedly showed this report to the witness during his testimony, and relied extensively on portions of this report for the purpose of refreshing the witness's recollection. Attached as Exhibit A to this motion is a redacted copy of this proffer report, with portions of the report that were not used to refresh the witness having been excised.²

As Defendant stated in the Motion, "Rule 612 states that 'when a witness uses a writing to refresh memory... while testifying... an adverse party is entitled to introduce in evidence any portion that relates to the witness's testimony.'" *Id.* Defendant further noted that the testifying agent "referred to his handwritten notes before answering" and argued that, under "the plain language of Rule 612," the document that refreshed the agent's testimony should be admitted into evidence. *Id.* If the Court is inclined to admit the agent notes pursuant to Defendant's motion, the Court should also admit the relevant portions of the August 2014 proffer report that defense counsel utilized to refresh Gutierrez' recollection while he testified.³

² The United States will make the original version of this report available to the Court so that the Court may assess the appropriateness of the proposed redactions.

³ The August 2014 proffer report also constitutes *Jencks* material and, if the Court decides not to admit the agent notes because given the Rule 612(b) carve-out for *Jencks* material, the proffer report likewise should not be admitted pursuant to Rule 612(b).

For the foregoing reasons, the United States respectfully requests that the Court deny Defendant Carlos Jimenez' Motion to Admit Agent Notes (Docket Entry 272) or, in the alternative, that the Court admit the pertinent portions of the August 2014 proffer report into evidence.

Respectfully submitted,
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Date: December 16, 2018

CERTIFICATE OF SERVICE

This is to certify that this document shall be served on counsel to Defendants via ECF.

/s/ William F. Abely
WILLIAM F. ABELY
Assistant U.S. Attorney

Dated: December 16, 2018

RULE 7.1 CERTIFICATION

This is to certify that counsel to the United States has conferred with opposing counsel and have attempted in good faith to resolve or narrow the issue.

/s/ William F. Abely
WILLIAM F. ABELY
Assistant U.S. Attorney

Dated: December 16, 2018